

GEORGE FOSTER

IBLA 89-263

Decided May 31, 1989

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease WYW 100432.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. | 188(b) (1982), when a lessee fails to pay the required rental on or before the anniversary date of the lease, on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. | 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and failure to timely pay was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the lease anniversary date does not constitute reasonable diligence.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals

In petitioning for class I reinstatement of an oil and gas lease under 30 U.S.C. | 188(c) (1982), failure to exercise reasonable diligence in paying the rental may be considered justifiable if it is demonstrated that, at or near the anniversary date of the lease, there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in failing to make timely payment. Neither the fact that the lessee forgot to make the payment nor the fact that he was preoccupied with business matters will justify a late rental payment.

APPEARANCES: George Foster, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

George Foster has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated January 23, 1989, denying his petition for class I reinstatement of oil and gas lease WYW 100432, which terminated on its anniversary date, June 1, 1988, for failure to pay rental on or before that date.

The original lease W-91690 was issued effective June 1, 1985. A partial assignment of 40 acres from lease W-91690 from Petroleum Research Corporation (PRC) to appellant was approved by the Department effective March 1, 1986, and identified as lease WYW 100432.

Rental for this lease was received by the Minerals Management Service on June 9, 1988, in an envelope postmarked June 6, 1988. By notice dated August 16, 1988, BLM informed appellant that his lease had terminated on its anniversary date and that appellant had the right to petition for reinstatement under 30 U.S.C. | 188(c) (1982) (class I reinstatement) and 30 U.S.C. | 188(d) (1982) (class II reinstatement).

In his petition for reinstatement, appellant asserted: "The rental payment was a few days late, because it just purely slipped my mind." In its decision, BLM found that appellant's reason for late payment did not meet the requirements of 30 U.S.C. | 188(c) (1982), because the late payment was not legally justifiable and did not constitute reasonable diligence. Therefore, BLM denied appellant's petition for class I reinstatement.

[1, 2] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. | 188(b) (1982), provides in part that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." Such lease, however, may be reinstated under section 31(c), 30 U.S.C. | 188(c) (1982), if the rental was paid within 20 days after the anniversary date, upon a showing by the lessee that the failure to pay on or before the anniversary date "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." See 43 CFR 3108.2-2(a) (class I); Ann L. Rose, 92 IBLA 308 (1986); Melvin P. Clarke, 90 IBLA 95, 97-98 (1985). The burden of showing that the failure to pay on or before the anniversary date was justified or not due to a lack of reasonable diligence is on the lessee. 43 CFR 3108.2-2(b).

It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. Ann L. Rose, supra at 310, and cases there cited. Failure to exercise reasonable diligence may be considered justifiable if it is demonstrated that, at or near the anniversary date, there existed sufficiently extenuating circumstances outside of the lessee's control which affected his actions in failing to make timely payment. Freedom Oil Co., 87 IBLA 71, 75 (1985); Dena F. Collins, 86 IBLA 32 (1985). The key component of this test is that the factors which caused the late payment must be outside the control of the lessee. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981);

Ramoco Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981), cert. denied, 454 U.S. 1032 (1981).

The Board has frequently held that negligence, forgetfulness, and inadvertence in failing to effect timely payments of rental are not sufficient to warrant a class I reinstatement, since they are circumstances within the lessee's control. Edgar B. Stern, 86 IBLA 72 (1985); James P. Felt, 84 IBLA 205 (1984); Leo M. Krenzler, 82 IBLA 205, 209 (1984); Eleanor L. M. Dubey, 76 IBLA 177, 179 (1983).

Appellant indicates that he forgot to pay the rental because he was preoccupied with business matters. The Board has held that the complexities of a lessee's business operations will not justify a late rental payment. Clarence Souser, 108 IBLA 59 (1989); Larry W. Ferguson, 81 IBLA 167 (1984). The Board cannot conclude that a late payment is justified when the lessee neglects to order his business affairs in such a fashion to ensure his lease rental is paid on time. Leo M. Krenzler, *supra* at 208; Larry W. Ferguson, *supra* at 169.

Appellant has neither justified his failure to timely submit his rental payment nor presented evidence that he exercised reasonable diligence. As Congress established that one of those elements must be present before reinstatement may be granted, the Department is without authority to reinstate the lease under the class I reinstatement procedures.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Wm. Philip Horton  
Chief Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge